

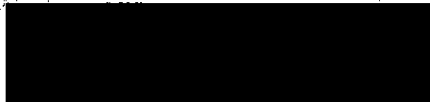


U.S. Department of Justice

Immigration and Naturalization Service

F-1

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File:



Office: Nairobi

Date:

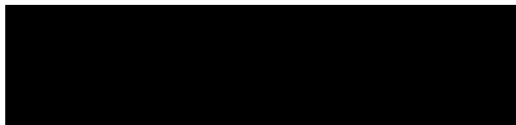
SEP 7 2000

IN RE: Petitioner:
Beneficiary:



Application: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F)

IN BEHALF OF APPLICANT:



Public Copy

Identifying data added to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The visa petition to classify the beneficiary as an immediate relative was found not to be readily approvable by the Officer in Charge, Nairobi, Kenya. Therefore, the officer in charge properly served the petitioner with notice of intent to deny the visa petition, and his reasons therefore, and ultimately denied the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The Petition to Classify Orphan as an Immediate Relative (Form I-600) was filed on May 11, 1999. The petitioner is a 34 year-old married citizen of the United States. The beneficiary, who at this time is 15 years old, was born in Addis Ababa, Ethiopia, on January 5, 1985. The beneficiary's biological mother, [REDACTED], and biological father, [REDACTED] have been identified in the record of proceeding and are stated by the petitioner to be deceased. The officer in charge denied the petition after determining that the beneficiary does not meet the statutory definition of "orphan" because the petitioner had submitted insufficient evidence to establish that the beneficiary's parents are deceased.

On appeal, counsel argues that the petitioner has submitted sufficient evidence to establish that the beneficiary's parents are deceased and that the beneficiary meets the definition of "orphan."

Section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(b)(1)(F), defines orphan in pertinent part as:

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption...

The petitioner submitted a birth certificate showing that the beneficiary, [REDACTED], was born on January 5, 1985. The birth certificate indicates that the beneficiary's biological father is [REDACTED] and that her biological mother is [REDACTED] [sic]. The petitioner submitted a statement made by the beneficiary's uncle on June 22, 1999, in which he claimed that the beneficiary's parents are dead, that "the Family Arbitration Council decided that I should take this [sic] children and make them live in the one room house that I had" and that he had agreed to allow the petitioner and his wife to adopt the beneficiary. It is noted that there is no independent evidence within the record showing that the Family Arbitration Council found that the beneficiary's biological parents are dead and that the uncle has been given legal custody of the beneficiary. The record also

contains a sworn statement made by the beneficiary's uncle on July 14, 1999, before a U.S. consular associate of the U.S. Embassy in Addis Ababa, Ethiopia. In his statement, the uncle claimed that "the mother of these children died one year after she gave birth and their father died while the mother was pregnant."

The petitioner submitted birth certificates showing that the beneficiary and her sister, [REDACTED], are twins born on January 5, 1985. According to two death certificates contained within the record, the beneficiary's biological father died on November 30, 1984, and her biological mother died on June 29, 1986. However, there is contradictory information within the record regarding the status of the beneficiary's parents. The petitioner submitted a home study report dated March 16, 1999, in which the adoption case worker stated, subsequent to interviewing the petitioner and his wife, that the birth dates of the beneficiary and her sister are unknown, that it is unclear whether or not the beneficiary and her sister are twins, and that the girls' biological parents died when they were approximately five years old. Further, as a result of an orphan investigation, the Ethiopian government's Children, Youth and Family Affairs Department ("CYFAD") indicated to the consular office at the U.S. Embassy in Addis Ababa, Ethiopia, that the CYFAD "does not believe the parents...[of the beneficiary] are dead." The conflicting information regarding the status of the beneficiary's biological parents has not been resolved.

Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. Further, it is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (Comm. 1988). The petitioner has submitted insufficient evidence to establish that the beneficiary's parents are deceased. Accordingly, the petitioner has not established that the beneficiary is an "orphan" within the meaning of section 101(b)(1)(F) of the Act. For this reason, the petition may not be approved.

Beyond the officer in charge's decision, the petitioner has submitted insufficient evidence that the adoption abroad was completed in accordance with the laws of the foreign-sending country. 8 C.F.R. 204.3(d)(1)(iv). The record contains a judgment dated December 25, 1998, in which [REDACTED] of the K/Woreda Court approved the October 11, 1998, adoption of the beneficiary by the petitioner; however, a copy of the October 1998 adoption agreement is not contained within the record.

Further, on November 23, 1998, the U.S. Embassy in Addis Ababa had requested that Ethiopia's Ministry of Foreign Affairs provide a

legal opinion regarding the legality of private adoptions in Ethiopia. In response, the Ministry of Foreign Affairs provided the U.S. Embassy with a letter dated December 12, 1998, which was prepared by the CYFAD, a department of the Ministry of Labor and Social Affairs. In its letter, the CYFAD stated that the Ministry of Labor and Social Affairs "has been empowered by the Government to control as well as to undertake international adoptions by issuing the appropriate regulation" and that, in accordance with the regulation, the Ministry "takes the responsibility of contracting adoptions for eventual emigration of a child." The CYFAD concluded that the Ministry of Labor and Social Affairs does not recognize private adoptions and must validate all intercountry adoptions.

The petitioner subsequently submitted a legal brief dated February 19, 1999, in which counsel in Ethiopia argued that private adoptions in Ethiopia, "a private act of individuals that are involved in the scenario," are legal and authorized under Ethiopian Civil Code. The petitioner submitted a subsequent brief from counsel arguing that the Ministry of Labor and Social Affairs adoption guidelines do not overcome the Ethiopian Civil Code's language indicating that a private adoption, approved by a court of law, is a valid adoption.

As noted above, in its correspondence to the U.S. Embassy, Addis Ababa, the Ethiopian government has explicitly stated that it requires that all international adoptions be sanctioned by the Ministry of Labor and Social Affairs. The petitioner has not demonstrated that the Ministry of Labor and Social Affairs has provided its approval of the instant adoption. Accordingly, the petitioner has submitted insufficient evidence to establish that the beneficiary has been adopted abroad in accordance with the laws of the foreign-sending country.

The petitioner's assertion that CYFAD's validation of private intercountry adoptions is not necessary is not supported by the U.S. Department of State. Current State Department instructions state the following:

PLEASE NOTE: In order to successfully complete an adoption in Ethiopia, U.S. citizens must work with the Ethiopian governmental central authority, the Children, Youth and Family Affairs Department (CYFAD) which is under the Ministry of Labor and Social Affairs. Americans who enter into private adoptions (private adoptions bypass the Children, Youth and Family Affairs Department) will not be able to take the child out of Ethiopia, and will not be able to obtain a U.S. immigrant visa to bring the child legally into the U.S.

As always in these proceedings, the burden of proof is on the petitioner to establish the beneficiary's eligibility for classification as an orphan. Matter of Annang, 14 I&N Dec. 502 (BIA 1973); Matter of Brantigan, 11 I&N 493 (BIA 1966); Matter of Yee, 11 I&N Dec. 27 (BIA 1964); Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The appeal is dismissed.